

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Unicare Life & Health)	
Insurance Company,)	
)	
Plaintiff,)	Case No. 1:04-CV-665
)	
vs.)	
)	
Jeannine V. Davidson,)	
<u>et al.</u> ,)	
)	
Defendants.)	

O R D E R

This matter is before the Court on the motion to dismiss (Doc. No. 26) filed by Defendant James A. Fatsy, Executor of the Estate of Jeannine V. Davidson. For the reasons that follow, Defendant's motion is well-taken and is **GRANTED**.

This is an interpleader action in which Plaintiff Unicare Life & Health Insurance Company ("Unicare") named Defendants Jeannine V. Davidson, William Davidson, and Lawrence P. Davidson as competing claimants for the proceeds of a life insurance policy it issued to Hobert Davidson. On February 28, 2005, counsel for Mrs. Davidson filed a suggestion of death on her behalf (Doc. No. 15) and on March 1, 2005, the Court granted a motion to substitute her executor, James A. Fatsy, as the party-in-interest. On July 28, 2005, on Magistrate Judge Black's report and recommendation, the Court granted Unicare leave to deposit the funds at issue, \$54,080.41, in the registry and fully discharged Unicare from this lawsuit. Doc. No. 23.

On January 3, 2006, Defendant William Davidson filed a notice of withdrawal of his claim to the deposited funds. Doc. No. 25. On January 17, 2006, Defendant Fatsy filed a motion to dismiss pursuant to Rule 54 of the Federal Rules of Civil Procedure. Doc. No. 26. In his motion, Mr. Fatsy indicates that the remaining claimant, Lawrence Davidson, has also withdrawn his claim to the contested funds. See Doc. No. 26, Ex. 2. Mr. Fatsy also argues that judgment in his favor is appropriate because Mr. Davidson failed to respond to a request for an admission that the form naming Jeannine V. Davidson the beneficiary of Hobert Davidson's insurance policy is valid. Mr. Fatsy's motion is unopposed.

Because Mr. Fatsy has attached matters outside the pleadings to his motion, the Court construes it as a motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. On review of the record, the Court concludes that Mr. Fatsy is entitled to judgment in his favor. It appears that both William Davidson and Lawrence Davidson have withdrawn their claims to Hobert Davidson's insurance proceeds. Moreover, as Mr. Fatsy correctly argues, Lawrence Davidson's failure to object to the request for admission is deemed an admission that the form naming Jeannine Davidson the beneficiary of the policy is valid. Fed. R. Civ. P. 36(b). Consequently, the Court finds that Mr. Fatsy is entitled to judgment in his favor.

Accordingly, Defendant's motion for summary judgment is well-taken and is **GRANTED**. The Clerk of Court is hereby **ORDERED** to pay James Arthur Fatsy, as Executor of the Estate of Jeannine V. Davidson, and William Cussen as his attorney, the sum of \$54,080.41 from the Court's Registry. The Clerk should mail the check to Mr. Fatsy's trial counsel. **THIS CASE IS CLOSED.**

IT IS SO ORDERED

Date February 24, 2006

s/Sandra S. Beckwith
Sandra S. Beckwith, Chief Judge
United States District Court